

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BENNIE McELWAIN,

Petitioner,

Case No. 1:05-cv-828

v.

HONORABLE PAUL L. MALONEY

SHERRY BURT,

Respondent,

_____ /

**ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

The Court has reviewed the Report and Recommendation (Dkt. #24) filed by United States Magistrate Judge Ellen S. Carmody in this action. The Report and Recommendation was duly served on the parties. No objections have been filed.

ACCORDINGLY, the Report and Recommendation is hereby adopted as the opinion of the Court.

THEREFORE, IT IS ORDERED that Respondent's Motion to Dismiss for Failure to Comply with the Statute of Limitations (Dkt. #23) is **GRANTED** for the reasons stated in the Report and Recommendation..

IT IS FURTHER ORDERED that the habeas corpus petition (Dkt. #1) is **DISMISSED**.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

This action is terminated.

Date: March 5, 2009

/s/ Paul L. Maloney
Paul L. Maloney
Chief United States District Judge